IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT BENCH JAIPUR

J U D G M E N T

Smt. Vandana Sharma Vs. State of Rajasthan & Others

(SB Civil Writ Petition No. 4294/97)

Kaushal Kumar Gautam Vs. State of Rajasthan & Others

(SB Civil Writ Petition No. 6435/97)

:

Date of Judgment : 1st September, 2006.

HON'BLE MR. JUSTICE KS RATHORE

Mr. DP Sharma, for the petitioners.
Mr. Prahlad Sharma, for the respondents.

Since both these writ petition are directed against the common judgment passed by the Non Government Educational Tribunal dated 1.11.96 hence, they are being decided by this common judgment.

In these writ petitions, the petitioner challenged the termination order before the Non Government Educational Tribunal. The Tribunal has dismissed the case filed by the petitioner under section 21 of the Rajasthan Non Government Educational Institution Act, 1989.

Learned counsel for the petitioners has challenged the Tribunal's judgment on the ground that the services of the petitioner cannot be terminated without following due process of law. To this effect, he has referred section 18 which deals with removal, dismissal or reduction in rank of employees. More particularly, he referred clause (iii) of Section 18 which stipulates as under:-

> "where the managing committee is of unanimous opinion that the services of an employee can not be continued without prejudice to the interest of the institution, the services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing".

By referring sub clause (iii) of section 18, learned counsel for the petitioners further submits that in the instant case, the termination order was passed on the ground that the services of the petitioner no longer required in the College, therefore, the services have been terminated.

And as per sub clause (iii), if the managing committee unanimously take the decision not to continue an employee without prejudice to the interest of the institution, the services of such employee can only be terminated after giving six months notice or salary in lieu thereof.

He further referred rule 39(1) of the The Rajasthan Non Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions) Rules, 1993 which stipulates as under:-

> "the services of an employee appointed temporarily for six months, may be terminated by the management at any time after giving at least one month's notice or one month's salary in lieu thereof. Temporary employee, who wishes to resign shall also give at least one month's notice in advance or in lieu thereof deposit or surrender one month's salary to the management".

And thus, after referring Section 18(iii) and Rule 39(1), the petitioner submits that since no compliance of the mandatory provisions of the Rules and the Act has been made, the termination order is per se illegal and contrary to the provisions of the law.

And in support of his submissions, he referred the judgment rendered by this Court in SB Civil Writ Petition No. 1995/01 "Managing Committee Sanatan Dharma Vs. R.N.G.E.T.", wherein this Court has held that-

> "The principle of natural justice is embodied in all statutory provisions. Once the appointment is given to the respondent no.2 it was incumbent upon the petitioner to give her an opportunity to explain as to how her appointment is valid

and could not be terminated. The petitioner of his own, cannot take a decision without giving an opportunity to the affected party that the appointment was ab initio void and, therefore, it could be terminated without issuing any show cause notice to the respondent no.2".

And as also observed by Hon'ble the Supreme Court in the case of Haresh Daya Ram Thakur Vs. State of Maharasthtra & Others reported in Western Law Cases (SC) Civil 2000 486 "If statute prescribe a procedure for doing a thing, that thing has to be done according to that procedure.

Per contra, learned counsel for the respondents referred rule 26 which deals with the recruitment and 29 deals with the appointment. Rule 30 deals with the period of probation.

Having heard rival submissions of the respective parties and perused the judgments referred by both the parties and the provisions of the Non Government Educational Institution Act, upon careful perusal of Section 18(3) and Section 39(1) it is no doubt that the management can terminate the services of the petitioner but can only be terminated after following due process of law as laid down under section 18(iii) Rule 39(1) and it is not disputed that the procedure has not been followed as the case of the respondent is that it is not required to be

followed as the petitioner were appointed on probation and during the probation period, there services has been terminated.

I have carefully gone through the judgment rendered by Hon'ble the Supreme Court wherein Hon'ble the Supreme Court has categorically stated that before terminating the services of the petitioner, the respondent ought to give notice or salary in lieu of termination which admittedly has not been given in the instant case. Therefore, the order impugned passed by the Educational Tribunal dated 1.11.96 and the termination order dated 13.5.96 are herewith quashed and set aside.

Accordingly, both the writ petition stands allowed.

(KS RATHORE), J.